

## **GENERAL COUNSEL MEMORANDUM**

### **Issue: Taxation of Valet Parking Transactions**

**Statute Ref: D.C. Official Code §§ 47-2001(n)(1)(L) and 47-2002(1)**

**April 5, 2002**

#### **ISSUE:**

What parts, if any, of the Valet Parking Transaction described herein are subject to tax under DC Code §§ 47-2001(n)(1)(L) and 47-2002(1)?

#### **CONCLUSION:**

All parts of the Valet Parking Transaction, whether at a restaurant or a “special event” are subject to the 12% gross receipts tax under § 47-2002 (1).

#### **FACTS:**

Valet Parking Companies, through its agents and employees, provide valet parking when valets are hired to stand outside restaurants or “special event” venues and take vehicles from the street, whether or not a fee is charged, and park that vehicle for the vehicle operator, often in a pre-arranged garage parking facility.

In general, there are 2 types of Valet Parking Transactions:

- (a) Valets are hired by restaurants to stand outside the *restaurant* to park cars of restaurant patrons: sometimes valet service is complimentary, sometimes there is a charge paid by the restaurant patron.
- (b) Valets are hired to stand outside the venue of a “*special event*” to park cars of those participating in the “special event.”

In general, there are 3 elements of the Valet Parking Transaction:

- (1) Fee paid for space in a garage where the valets take the cars.<sup>1</sup>
- (2) Hourly fee paid to hire valets to take the cars from the vehicle operator to the parking site, generally, \$15-20/hour/valet.
- (3) Fee paid, if any, by the vehicle operator to the valet for the Valet Parking Service.

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<sup>1</sup> This part of the Valet Parking Transaction is an issue only where the valet company contracts for the use of the garage space. Generally, this occurs almost exclusively in “special event” transactions. Generally, payments to a garage in the Valet Parking Transaction are subject to the parking/storage tax under §47-2001(n)(1)(L). Such payments would be based upon the gross receipts of the garage.

Generally, restaurants hire 3-6 valets per evening; 5+ valets are often hired for “special events.” Generally, the monthly statement for valet parking rendered to a restaurant offsets the total hourly fee to hire valets [element #(2), above] by the amount of fees paid by vehicle operators to the valets [element #(3), above]. The amount generally paid by the restaurant owner is the net amount.

Generally, restaurants contract directly with a Garage or other Parking Facility for a number of parking spaces where the valets will park the vehicles of restaurant patrons. Restaurants pay the Garage or other Parking Facility a monthly (or annual) fee for these parking spaces plus the District Sales Tax under DC Code § 47-2002(1).

“Special Events” transactions differ from restaurant valet parking transactions in the following ways:

1. “Special event” transactions can be arranged through valet companies, event planners, or others. When valet parking companies arrange for all elements of the valet parking transaction, the valet company secures the garage space where the valets will take and park the cars of the event patrons. In some cases, additional personnel of the valet company are hired to do such tasks as opening the car door, or holding an umbrella over the head of the patrons as they depart from their cars and to escort the patron to the door of the event.
2. Where the valet parking company secures the garage space where the valets will take and park the cars of the event patrons, that garage space can be secured from a commercial garage facility or, in some cases, can be secured at the facility of the non-profit (or government-owned facility) where the special event is held (or at a garage of a neighboring non-profit organization).
3. When the valet parking company secures garage space in the garage of a non-profit, in some cases, the payment for the garage space is called a garage fee, and in some cases, the payment is called a contribution.

#### **TAX STATUTES AT ISSUE:**

DC Tax Code: §47-2002 (1) imposes a 12% tax on the gross receipts from the sale of or the ***charges for the service of parking or storing of motor vehicles***.....

§47-2001(n)(1)(L) defines a “retail sale” and “sale at retail” to mean the sale...of any service taxable under chapter 20. The terms include (but are not limited to): ***the sale or charge for the service of parking, storing, or keeping motor vehicles***...

§ 47-2010 states a presumption of taxability under which it shall be presumed that all receipts from the sale of tangible personal property and ***services mentioned in this chapter*** are subject to tax until the contrary is established, and the burden of proving that a receipt is not taxable hereunder shall be upon the vendor or the purchaser as the case may be. Except as provided in § 47-2005(3),

unless the vendor shall have taken from the purchaser a certificate signed by and bearing the name and address of the purchaser and the number of his registration certificate to the effect that the property or service was purchased for resale or the property or service is exempt under § 47-2005, the receipts from all sales shall be deemed taxable. The certificate herein required shall be in such form as the Mayor shall prescribe and, in case no certificate is furnished or obtained prior to the time the sale is consummated, the tax shall apply to the gross receipts therefrom as if the sale were made at retail.

### **TAXPAYER’S ARGUMENT:**

Taxpayers argue that the Valet Parking Transaction does not involve the service of “parking” or “storage” of motor vehicles, but rather Valet Parking Transactions are personal services. They argue that it is not clear that the statute applies to valet parking (as opposed to a garage or hotel valet parking transaction). Taxpayers argue that since the statutes do not specifically state a tax for “valet parking services,” these valet parking transactions are excluded from the parking tax statutes cited and are not subject to District sales tax.

### **OTR POSITION:**

OTR’s view is that factually all 3 elements of the Valet Parking Transaction involve payments for parking or the service of parking [or the storage of vehicles, in the case of payments for garage space]. The District statutes are broad in describing the transactions covered. Consequently, OTR’s position is that the 12% parking tax is due and payable on the gross amounts received in each element of the Valet Parking Transaction. Additionally, OTR’s position is that all parties to Valet Parking Transactions have a duty to maintain books and records so that these Valet Parking Transactions can be audited by OTR to determine whether the proper amount of tax has been paid.

With respect to “Special Events” transactions, whenever tax-exempt or government organizations or entities are involved in a Valet Parking Transaction, the Valet Parking Company must document that involvement by collecting a Tax-Exemption Certificate and retaining a copy of the Certificate in the Valet Company files to substantiate the exemption. Failure to collect and retain the Tax-Exemption Certificate will allow OTR to conclude that that element of the Valet Parking Transaction is subject to the 12% Parking Tax under DC Code § 47-2002 (1). Further guidance may be needed to clarify whether and when Tax-Exempt Organizations involved in “special events” are in receipt of Unrelated Business Taxable Income.

With respect to Valet Parking Transactions in which the Valet Parking Company is hired to secure the Parking or Garage space where the valets will park the vehicles of the

vehicle operators, the Valet Company should collect the 12% Parking Tax on the gross receipts from all charges (including the charge for parking or garage space) from the customer, should pay the tax to OTR and secure a Certificate of Resale from OTR under DC Code § 47-2001(n)(1) and DCMR §§ 414.1 and 414.3 to provide to the Garage or other parking facility. The Garage or parking facility should maintain a copy of the Certificate of Resale in its files to document the transaction.

Amounts paid for Garage or other parking facility space where the valets park the vehicles of the vehicle operators, whether called a garage fee or “contribution” are essentially payments for the storage of motor vehicles and are therefore subject to the 12% Parking Tax under DC Code § 47-2002(1).

Hourly fees for personnel employed by Valet Companies totally and completely unrelated to parking, if separately invoiced, may not be subject to the 12% Parking Tax.

### **CONCLUSION:**

The gross receipts from the charges for the 3 elements of the Valet Parking Transaction:

- (1) Fee paid for space in a garage where the valets take the cars,
- (2) Hourly fee paid to hire valets to take the cars from the vehicle operator to the parking site, generally, \$15-20/hour/valet, and
- (3) Fee paid, if any, by the vehicle operator to the valet for the Valet Parking Service,

are subject to the Parking Tax under DC Code § 47-2002(1) [currently set by statute at 12%]. This rule should apply whether the Valet Parking Transaction involves a restaurant or a “special event.” This rule applies to all locations where the Valet Company is conducting Valet Parking Transactions. The Valet Companies are liable for collecting this tax on receipts from each element of the Valet Parking Transaction, maintaining books and records to permit audit of these transactions, and paying the taxes collected over to OTR as required under the statute.

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